

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEITH HOFF, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant. Case No. 2:12-cv-00235-MMD-PAL
REPORT OF FINDINGS AND RECOMMENDATION
(Various Mtns - Dkt. ##11, 14, 15, 16, 17)

This matter is before the court on Plaintiff Keith Hoff's Motion to Amend Complaint (Dkt. #11), Second Motion to Amend Complaint (Dkt. #14), Motion to Submit Declaration for Trial or Arbitration (Dkt. #15), Motion to Submit Declaration for Trial or Arbitration (Dkt. #16), and Motion for Pretrial Hearing (Dkt. #17). The court has considered the various Motions.

Plaintiff is proceeding in this matter pro se. On December 18, 2012, the court approved Plaintiff's Application to Proceed In Forma Pauperis (Dkt. #4) and screened his complaint pursuant to 28 U.S.C. § 1915. The court found Plaintiff's Complaint (Dkt. #7) failed to state a claim upon which relief could be granted, and dismissed the Complaint with leave to amend. Plaintiff requested an extension of time to file an amended complaint, and the court granted his request. *See Order* (Dkt. #10). The instant Motions followed.

Upon granting a request to proceed in forma pauperis, a court must additionally screen a complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the

1 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
 2 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for
 4 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a
 5 ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir.
 6 2000). A properly pled complaint must provide a short and plain statement of the claim showing that
 7 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
 8 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands “more than labels
 9 and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129
 10 S.Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as
 11 true all well-pled factual allegations contained in the complaint, but the same requirement does not
 12 apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of action,
 13 supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where the claims in the
 14 complaint have not crossed the line from plausible to conceivable, the complaint should be dismissed.
 15 *Twombly*, 550 U.S. at 570.

16 Plaintiff’s Motions to Amend Complaint (Dkt. ##11, 14) are exceptionally difficult to follow
 17 and do not comply with Local Rule of Civil Practice 15-1(a) which requires a party to attach a proposed
 18 amended pleading to any motion to amend. In addition, the Motions were not required because the
 19 court already directed Plaintiff to file an amended complaint. Therefore, the court will construe these
 20 Motions as Plaintiff’s amended pleading. With respect to Plaintiff’s Motions to Submit Declarations
 21 (Dkt. ##15, 16), Rule 8 of the Federal Rules of Civil Procedure requires a complaint or amended
 22 complaint to contain “a short and plain statement of the claim showing the pleader is entitled to relief.”
 23 *Id.* Additionally, Rule 8(e) states, “Each averment of a pleading shall be simple, concise, and direct.”
 24 Taken together, these rules emphasize the requirement that pleadings should be clear and brief.
 25 Complaints should not be needlessly long, highly repetitive, or rambling. Declarations and other
 26 evidence need not be submitted. Therefore, the Motions to Submit Declarations are denied.

27 The allegations contained in the Motions to Amend are nearly incomprehensible. Plaintiff
 28 believes that his constitutional rights were violated by the United States, his former attorney, Patrick

1 Marshall, and retired United States Bankruptcy Judge Grube. Plaintiff contends that Mr. Marshall paid
 2 for a subpoena in a case pending in the state of California, and “this caused a fraudulent judgment at
 3 trial in bankruptcy court.” *See Motion* (Dkt. #14) at 1. Additionally, Plaintiff was involved in another
 4 state court case, which was removed to federal court, and “this fraudulent trial used misrepresentation
 5 of facts and evidence, they concealed and [sic] evidence that a court ex parte meeting occurred between
 6 the judge and Mr. Marshall.” *Id.* at 2. Plaintiff asserts he was unlawfully imprisoned, which caused
 7 him physical and psychological damage. He contends Mr. Marshall embezzled money from him and
 8 colluded with Judge Grube. Plaintiff asks that this court order “the subpoena of confirmation of
 9 guarantee filed at San Benito County Recorder’s Office” in 1991 or 1992, which will show that he is
 10 owed \$1,729,000.00 plus interest.

11 Plaintiff’s allegations are frivolous because they lack an arguable basis in law and fact. *Neitzke*
 12 *v. Williams*, 490 U.S. 319, 325 (1989). A finding of frivolousness is warranted where the facts alleged
 13 are “clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *see also Ashcroft v. Iqbal*, – U.S.
 14 –, 129 S. Ct. 1937, 1959 (2009). A court must not dismiss a complaint simply because the set of facts
 15 presented by the plaintiff appears to be unlikely; however, a complaint must allege facts “to state a
 16 claim that is plausible on its face.” *Bell Atl. Com. v. Twombly*, 550 U.S. 544, 570 (2007). Because
 17 Plaintiff’s Amended Complaint does not set forth a plausible claim, it is recommended that it be
 18 dismissed with prejudice. Because allegations of other facts would not cure it, Plaintiff is not entitled
 19 to an additional opportunity to amend, and the court will recommend this case be dismissed. Therefore,
 20 Plaintiff’s Motion for Pretrial Hearing or Arbitration (Dkt. #17) is denied.

21 Based on the foregoing,

22 **IT IS ORDERED** that:

23 1. Plaintiff’s Motions to Amend Complaint (Dkt. ##11, 14) are DENIED as MOOT, the
 24 court having previously granted leave to amend and Plaintiff having failed to comply
 25 with LR 15-1 and the court’s prior order.

26 2. Plaintiff’s Motions to Submit Declarations (Dkt. ##15, 16) are DENIED.

27 3. Plaintiff’s Motion for Pretrial Hearing or Arbitration (Dkt. #17) is DENIED.

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1 **IT IS RECOMMENDED** that Plaintiff's Amended Complaint (Dkt. ##11, 14) be DISMISSED
2 for failure to state a claim upon which relief can be granted.

3 Dated this 3rd day of June, 2013.

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5 
6 PEGGY A. TEEN
7 UNITED STATES MAGISTRATE JUDGE

NOTICE

8 These findings and recommendations are submitted to the United States District Judge assigned
9 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being
10 served with these findings and recommendations, any party may file written objections with the court.
11 Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and
12 recommendations of a magistrate judge shall file and serve *specific written objections* together with
13 points and authorities in support of those objections, within fourteen days of the date of service of the
14 findings and recommendations. The document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendations." The parties are advised that failure to file objections within the
16 specified time may waive the right to appeal the District Court's Order. *Martinez v. Ylst*, 951 F.2d 1153
17 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject
18 to the page limitations found in LR 7-4.